

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF EAST KENTUCKY POWER)	
COOPERATIVE, INC. FOR AN ORDER)	CASE NO.
DECLARING THE GLASGOW LANDFILL GAS)	2014-00292
TO ENERGY PROJECT TO BE AN ORDINARY)	
EXTENSION OF EXISTING SYSTEMS IN THE)	
USUAL COURSE OF BUSINESS AND A JOINT)	
APPLICATION OF FARMERS RURAL)	
ELECTRIC COOPERATIVE CORPORATION)	
AND EAST KENTUCKY POWER)	
COOPERATIVE, INC. FOR APPROVAL TO)	
ENTER INTO A TEN YEAR PURCHASED)	
POWER AGREEMENT AND APPROVAL OF A)	
SPECIAL CONTRACT)	

ORDER

On August 21, 2014, East Kentucky Power Cooperative, Inc. ("EKPC") filed an application requesting the Commission to issue an Order declaring the Glasgow Landfill Gas to Energy Project ("Glasgow LFGTE Project") to be an ordinary extension of existing systems in the usual course of business. As part of the same application, EKPC and Farmers Rural Electric Cooperative Corporation ("Farmers"), collectively ("Joint Applicants"), request an Order approving a Capacity, Energy and Environmental Attribute Purchase, Sale and Interconnection Agreement dated August 13, 2014, a special contract which relates to a landfill gas to energy project. Joint Applicants, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, filed a petition on October 27, 2014, seeking confidential treatment for certain material in their Responses to Commission Staff's First Request for Information ("Staff's First Request"). This Order addresses only Joint Applicants' October 27, 2014 petition.

DISCUSSION

The Commission is a public agency subject to Kentucky's Open Records Act, and all public records of the Commission "shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."¹ Therefore, "all material on file with the commission shall be available for examination by the public unless the material is confidential."² Any party requesting a grant of confidential treatment for material has the burden to prove that the material falls within the exclusions from disclosure enumerated in the Open Records Act.³

807 KAR 5:001, Section 13(2), sets forth the procedure for making a request for confidential treatment, and it requires Joint Applicants to establish "specific grounds pursuant to KRS 61.878, upon which the commission should classify the material as confidential."⁴ It also requires Joint Applicants to state "the time period in which the material should be treated as confidential and the reasons for the time period."⁵

Joint Applicants seek confidential treatment for information concerning the off-system resource of all Rural Electric Cooperation Corporation Member-Owners served by EKPC under their Wholesale Power Contracts with EKPC; information concerning the cost of capacity, energy and environmental attributes sold to Farmers; billing components relating to the proposed project; and information concerning capital cost

¹ KRS 61.872(1).

² 807 KAR 5:001, Section 13(1). The material specifically identified in Joint Applicants' request is accorded confidential treatment pending action by the Commission or its executive director. 807 KAR 5:001, Section 13(4).

³ 807 KAR 5:001, Section 13(2)(c).

⁴ 807 KAR 5:001, Section 13(2)(a)(1).

⁵ 807 KAR 5:001, Section 13(2)(a)(2).

per kilowatt ("kW") for the Glasgow LFGTE Project. Joint Applicants request confidential treatment for a period of at least ten years.

Joint Applicants state that information supplied in response to Item 5 of Staff's First Request shows potential third-party providers and other project-specific information. In order to meet their burden of proof, Joint Applicants must show that the material in question is generally recognized as confidential or proprietary and that the information would permit an unfair commercial advantage to competitors if openly disclosed.⁶ With regard to the information concerning the off-system resource of all Rural Electric Cooperation Corporation Member-Owners served by EKPC under their Wholesale Power Contracts with EKPC in response to Item 5 of Staff's First Request, the Commission finds that it has already denied confidential treatment to a purchase power contract between Jackson Energy Cooperative Corporation and Wellhead Energy Systems, LLC,⁷ and that Grayson Rural Electric Cooperative Corporation ("Grayson") has already publicly disclosed its request to purchase 9.4 megawatts of power from Magnum Drilling of Ohio, Inc.⁸ The Commission finds that the information contained in the response is not generally recognized as confidential or proprietary.

Joint Applicants do not demonstrate how the information would permit an unfair commercial advantage to competitors if disclosed. Joint Applicants have not met their

⁶ KRS 61.878(1)(c)(1); 807 KAR 5:001, Section 13(2)(c).

⁷ Case No. 2013-00219, *Application of Jackson Energy Cooperative Corporation for an Adjustment of Rates* (Ky. PSC Feb. 14, 2014) (motion for reconsideration denied by an Order entered Feb. 27, 2014).

⁸ Case No. 2012-00503, *Petition and Complaint of Grayson Rural Electric Cooperative Corporation for an Order Authorizing Purchase of Electric Power at the Rate of Six Cents per Kilowatt Hour of Power vs. a Rate in Excess of Seven Cents per Kilowatt Hour Purchased from East Kentucky Power Cooperative Under a Wholesale Power Contract as Amended Between Grayson Rural Electric Cooperative Corporation and East Kentucky Power Cooperative, Inc.* (Ky. PSC July 17, 2013).

burden to show that the information qualifies for confidential treatment; accordingly, we find the information in the response to Staff's First Request, Item 5, page 2 of 2, should be publicly available and deny this part of Joint Applicants' request.

Joint Applicants state that information supplied in response to Staff's First Request, Item 15, contains the anticipated total megawatt hours ("MWh"), capital costs, and fuel costs associated with the Glasgow LFGTE Project. Joint Applicants further state that the information supplied in response to Staff's First Request, Item 18.b., contains the capital cost per kW for the Glasgow facility. With regard to the total anticipated MWh, the Commission finds that generation information is not generally recognized as confidential or proprietary, and the information would not permit an unfair commercial advantage to competitors if openly disclosed.⁹

The Commission finds that on five prior occasions the Commission has granted similar declarations finding that relatively small-sized LFGTE projects are exempt from the requirements for the CPCN under KRS 278.020(1).¹⁰ The Commission finds that in each of those five declarations, the approximate capital cost to construct the facility has

⁹ Case No. 2014-00166, *2014 Integrated Resource Plan of Big Rivers Electric Corporation* (Ky. PSC Aug. 26, 2014) at 21.

¹⁰ Case No. 2007-00509, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Maysville-Mason County Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business* (Ky. PSC Mar. 26, 2008); Case No. 2006-00033, *Application of East Kentucky Power Cooperative, Inc., for an Order Declaring the Pendleton County Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business* (Ky. PSC Mar. 10, 2006); Case No. 2005-00164, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Hardin County Landfill Gas to Energy Project to be an Ordinary Extension of Existing Systems in the Usual Course of Business* (Ky. PSC July 8, 2005); Case No. 2002-00474, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Green Valley and Laurel Ridge Landfill Gas to Energy Projects to be Ordinary Extensions of Existing Systems in the Usual Course of Business* (Ky. PSC Mar. 3, 2003); and Case No. 2002-00352, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring Landfill Gas to Energy Projects to be Ordinary Extensions of Existing Systems in the Usual Course of Business* (Ky. PSC Dec. 18, 2002).

been disclosed¹¹ and further finds that capital costs are not generally recognized as confidential or proprietary when submitted in support of a request for a CPCN.¹² Joint Applicants do not demonstrate how the capital cost information would permit an unfair commercial advantage to competitors if disclosed.

The Commission finds that fuel cost projections are indicative of the cost to produce power and they provide insight into the prices at which a utility is willing to buy and sell power. Their disclosure could permit an unfair commercial advantage to competitors and they are generally recognized as confidential or proprietary.¹³ The Commission finds, nonetheless, that the fuel associated with this project is from a unique and exclusive source.¹⁴ EKPC, as purchaser under the agreement with the city of Glasgow, agrees to purchases from Glasgow, as seller, "all Landfill Gas produced and delivered to Purchasers' LFGTE Facility, up to the design capacity of the LFGTE Facility."¹⁵ EKPC also has a first right of refusal for the purchase of any additional landfill gas captured by Glasgow.¹⁶ Further, EKPC has a firm contract to sell the entire output of the Glasgow LFGTE Facility to Farmers, and Farmers is obligated to pay EKPC all of the costs associated with that project. Joint Applicants fail to demonstrate how the public disclosure of the fuel cost information would permit an unfair commercial

¹¹ *Id.*

¹² Case No. 2014-00166, *2014 Integrated Resource Plan of Big Rivers Electric Corporation* (Ky. PSC Aug. 26, 2014) at 15 and 16.

¹³ *Id.* at 14.

¹⁴ Joint Application, Exhibit 13, Landfill Gas Purchase Agreement Glasgow, Kentucky Landfill, at 2 and 3.

¹⁵ *Id.*

¹⁶ *Id.*

advantage to competitors if disclosed. We find the information in the response to Staff's First Request, Items 15 and 18.b., should be publicly available and deny this part of Joint Applicants' request.

Joint Applicants state that EKPC's sample bill to Farmers provided in response to Staff's First Request, Item 17, contains billing components for the project that qualify as confidential information. As the Commission stated, "ratepayers have a right to know the actual costs of the power that they are purchasing, and they have a right to know the evidence upon which the Commission relied in determining that the costs" of a contract are fair, just, and reasonable.¹⁷ Joint Applicants do not demonstrate that the information is generally recognized as confidential or proprietary, and Joint Applicants do not demonstrate how this information would permit an unfair commercial advantage to competitors if disclosed. We find the information in the response to Staff's First Request, Item 17, should be publicly available and deny this part of the Joint Applicants' request.

Joint Applicants have not met their burden to show that any of the information qualifies for confidential treatment; accordingly, we find the information should be publicly available and deny Joint Applicants' request.

IT IS THEREFORE ORDERED that:

1. Joint Applicants' Motion for Confidential Treatment is denied as discussed in this Order.

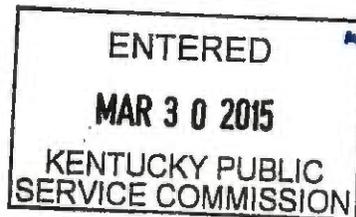
¹⁷ Case No. 2013-00219, *Application of Jackson Energy Cooperative Corporation for an Adjustment of Rates* (Ky. PSC Feb. 14, 2014) at 2 and 3 (motion for reconsideration denied by an Order entered Feb. 27, 2014).

2. Joint Applicants' request for confidential treatment for information contained in information and documentation provided in responses to Staff's First Request, Items 5, 15, 17, and 18.b., is denied.

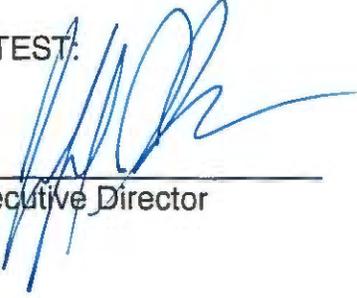
3. Within seven days of the date of this Order, Joint Applicants shall file revised pages reflecting as unredacted the information that has been denied confidential treatment.

4. The materials denied confidential treatment shall be withheld from public inspection for 20 days from the date of this Order to allow Joint Applicants to seek any remedy afforded by law.

By the Commission



ATTEST:



Executive Director

*East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

*Farmers R.E.C.C.
504 South Broadway
P. O. Box 1298
Glasgow, KY 42141-1298

*David S Samford
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504